

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
88 Pine Street
24th Floor
New York, NY 10005
Attorneys for Defendant, Lincoln National Life Insurance Company

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ JAN 25 2011 ★

BROOKLYN OFFICE

By: _____

Steven P. Del Mauro, Esq.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

**JIMMY NEGRON, as Trustee of the Rose
Irizarry 2008 Life Insurance Trust,**

Plaintiff,

vs.

**LINCOLN NATIONAL LIFE INSURANCE
COMPANY,**

Defendant.

GARAUFIS, J.

LEVY M. J.

Civil Action No.

CV 11 - 0363

CIVIL ACTION – NOTICE OF REMOVAL

PLEASE TAKE NOTICE that the undersigned attorneys for defendant, Lincoln National Life Insurance Company ("Lincoln National"), petition this Honorable Court for an order pursuant to 28 U.S.C. §1441, et seq., removing to the United States District Court, Eastern District of New York, a matter instituted in the Supreme Court of the State of New York, County of Kings, bearing index number 500585/2010.

PLEASE TAKE FURTHER NOTICE that a copy of this removal petition has been filed with the Clerk of the Supreme Court of the State of New York, County of Kings, thereby effecting removal pursuant to 28 U.S.C. §1446(b).

PLEASE TAKE FURTHER NOTICE that by effecting removal of this civil action, Lincoln National reserves all rights to raise any and all defenses available under the Federal Rules of Civil Procedure including, but not limited to, FED. R. CIV. P. 12.

PLEASE TAKE FURTHER NOTICE that in support of this notice of removal, Lincoln National shall rely upon the following:

1. On or about December 21, 2010, Jimmy Negron ("Negron") as Trustee of the Rose Irizarry 2008 Life Insurance Trust ("Negron") filed a complaint in the Supreme Court of the State of New York, County of Kings, bearing index no. 500585/2010. Annexed as Exhibit "A" is a copy of the summons and complaint filed on behalf of Negron, which constitutes all process, pleadings and/or orders served upon Lincoln National to date within the meaning and intent of 28 U.S.C. §1446.

2. Lincoln National was served with summons and complaint on January 10, 2011, upon receipt of the documents annexed hereto as Exhibit "A." Removal is therefore timely under 28 U.S.C. §1446(b) in that this removal petition was filed prior to the expiration of thirty (30) days from the date Lincoln National was properly and validly served with summons and complaint by Negron.

3. At the time of the filing of this complaint and this removal petition, Negron maintained a primary residence and domiciliary located at 1607 Forster Street, Harrisburg, PA 17113 and is a citizen of the State of Pennsylvania within the meaning and intent of 28 U.S.C. § 1332.

4. The Rose Irizarry 2008 Life Insurance Trust is a citizen of the State of Pennsylvania within the meaning and intent of 28 U.S.C. § 1332 at the time of the filing of the complaint and this removal petition.

5. At the time of the filing of the complaint and this removal petition, Lincoln National is a corporation organized under the laws of the State of Indiana where it maintains its principal place of business. Lincoln National is a citizen of the State of Indiana within the meaning and intent of 28 U.S.C. § 1332.

6. There is complete diversity of citizenship between the parties in this action within the meaning and intent of 28 U.S.C. § 1332

7. The court's review of the complaint will reveal that Negron alleges Lincoln National issued a policy of life insurance bearing policy number JJ-7040713 insuring the life of Rose Irizarry, a resident of Brooklyn, New York, in the amount of \$5,000,000.00. Negron alleges that on or about July 6, 2010, Rose Irizarry expired and as a consequence of her death, the Trust asserted a claim seeking payment of the death benefit in the amount of \$5,000,000.00, together with interest from the date of the insured's death. Negron alleges Lincoln National breached its contractual duty to the Trust in that Lincoln National has not paid the death benefit claim.

8. The amount in controversy at the time of the filing of the complaint and this removal petition between the parties exceed the sum of \$75,000.00, exclusive of interest and costs of suit.

9. This court maintains subject matter jurisdiction pursuant to 28 U.S.C. §1332. Removal is therefore appropriate and permitted under 28 U.S.C. §1441(a) and (b).

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

MCELROY, DEUTSCH, MULVANEY
& CARPENTER, LLP
Attorneys for Defendant, Lincoln National
Life Insurance Company

By: 

Steven P. Del Mauro, Esq.

Dated: January 24, 2011

EXHIBIT “A”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JIMMY NEGRON, as Trustee of the Rose Irizarry
2008 Life Insurance Trust,

Plaintiff,

vs.

LINCOLN NATIONAL LIFE INSURANCE
COMPANY

Defendants.

Date Filed: 12/21/10

Index No. 500585/2010

Plaintiff designates Kings
County as the place of trial

The Basis of Venue is
Place where Cause of Action Arose

SUMMONS

Plaintiff resides at

County of

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorneys within twenty (20) days after the service of this summons, exclusive of the date of service (or within thirty (30) days after service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
December 20, 2010

SCHINDEL, FARMAN, LIPSIOUS,
GARDNER & RABINOVICH LLP
Attorneys for Plaintiff

By: 

Ira S. Lipsius, Esq.
14 Penn Plaza, Suite 500
New York, New York 10122
(212) 563-1710

Defendant's address:

Lincoln National Life Insurance Company
100 North Greene Street, P.O. Box 21008
Greensboro, NC 27420

Index No. 500585/10 Year 20
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

JIMMY NEGRON, as Trustee of the Rose Irizarry 2008 Life Insurance Trust,

Plaintiff,

-against-

LINCOLN NATIONAL LIFE INSURANCE COMPANY,

Defendant.

SUMMONS AND COMPLAINT

SCHINDEL, FARMAN, LIPSIOUS, GARDNER & RABINOVICH LLP

Attorneys for Plaintiff

Office and Post Office Address, Telephone

14 PENN PLAZA, SUITE 500

NEW YORK, NEW YORK 10122

(212) 563-1710

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

Attorney(s) for

Sir: — Please take notice

☐ NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

20

☐ NOTICE OF SETTLEMENT

that an order
settlement to the HON.
of the within named court, at
on

of which the within is a true copy will be presented for
one of the judges

20

at

M.

Dated,

Yours, etc.

SCHINDEL, FARMAN, LIPSIOUS,
GARDNER & RABINOVICH LLP

Attorneys for

To

Office and Post Office Address, Telephone

14 PENN PLAZA, SUITE 500

NEW YORK, NEW YORK 10122

Attorney(s) for

STATE OF NEW YORK, COUNTY OF

SS.:

I, the undersigned, an attorney admitted to practice in the courts of New York State,

Check Applicable Box

- ☐ Certification
By Attorney
- ☐ Attorney's
Affirmation

certify that the within

has been compared by me with the original and found to be a true and complete copy.

state that I am

the attorney(s) of record for

action; I have read the foregoing

in the within

and know the contents thereof;

the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters

I believe it to be true. The reason this verification is made by me and not by

The grounds of my belief as to all matter not stated upon my own knowledge are as follows:

I affirm that the foregoing statements are true, under the penalties of perjury.

Dated:

STATE OF NEW YORK, COUNTY OF

SS.:

The name signed must be printed beneath

I, being duly sworn, depose and say: I am

Check Applicable Box

- ☐ Individual
Verification
- ☐ Corporate
Verification

in the within action; I have read the foregoing

and know the contents thereof; the same is true to my own knowledge, except

as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true.

the of

a corporation and a party in the within action; I have read the foregoing

and know the contents thereof; and the same is true to my own knowledge,

except as to the matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. This verification is made by me because the above party is a corporation and I am an officer thereof.

The grounds of my belief as to all matters not stated upon my own knowledge are as follows:

Sworn to before me on

20

The name signed must be printed beneath

STATE OF NEW YORK, COUNTY OF

SS.:

(If more than one box is checked - indicate after names type of service used.)

I, being sworn, say: I am not a party to the action, am over 18 years

of age and reside at

On 20 I served the within

Check Applicable Box

- ☐ Service
By Mail
- ☐ Personal
Service on
Individual
- ☐ Service By
Electronic
Means
- ☐ Overnight
Delivery
Service

by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

by delivering a true copy thereof personally to each person named below at the address indicated. I knew each person served to be the person mentioned and described in said papers as a party therein:

by transmitting the papers by electronic means to the telephone number listed below, with number was designated by the attorney for such purpose. I received a signal from the equipment of the attorney served indicating that the transmission was received. I also deposited a true copy of the papers, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service, addressed to the attorney at the address set forth after the name:

by depositing a true copy thereof, enclosed in a wrapper addressed as shown below, into the custody of for overnight delivery, prior to the latest time designated by that service for overnight delivery.

Sworn to before me on

20

The name signed must be printed beneath

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X
JIMMY NEGRON AS TRUSTEE OF THE ROSE
IRIZARRY 2008 LIFE INSURANCE TRUST

Index No.: 500585/10

Plaintiff,

COMPLAINT

-against-

LINCOLN NATIONAL LIFE INSURANCE COMPANY

Defendant.
-----X

Jimmy Negron, as Trustee of The Rose Irizarry 2008 Life Insurance Trust (the "Trust"),
by his attorneys, Schindel, Farman, Lipsius, Gardner & Rabinovich LLP, alleges as follows:

1. Plaintiff, the Trust, is a trust wherein Jimmy Negron is the Trustee.
2. Lincoln National Life Insurance Company ("Lincoln") is a life insurance company doing business in New York.
3. On or about August 8, 2008, Lincoln issued insurance policy number JJ-7040713 (the "Lincoln policy") in the amount of \$5,000,000 insuring the life of Rose Irizarry, a resident of the Brooklyn, New York.
4. Rose Irizarry passed away of natural causes on July 6, 2010.
5. Lincoln received all premiums due as of the date of death of Rose Irizarry.
6. At the time of Rose Irizarry's death, the Lincoln policy was in full force and effect.
7. The Trust duly filed a notice of claim with Lincoln for the policy benefits.
8. Lincoln has not paid the claim but rather commenced an investigation.

9. To date, Lincoln has refused to pay the Trust's claim and continues to claim that it is conducting an investigation.

10. Lincoln is under contractual obligation to pay the Trust \$5 million, plus interest, from the date of Rose Irizarry's death.

11. Lincoln breached its contractual duty to the Trust.

12. The Trust is due \$5 million, plus interest from Lincoln.

WHEREFORE, Jimmy Negron, as the Trustee of the Rose Irizarry General Trust, respectfully requests that the Court enter judgment against defendant in the amount of \$5,000,000 plus interest at the rate of 9% annually plus costs, and attorneys' fees, and such other relief as this Court may deem just and proper.

Dated: New York, New York
December 20, 2010

SCHINDEL, FARMAN, LIPSIOUS,
GARDNER & RABINOVICH LLP
Attorneys for Plaintiff

By: _____

Ira S. Lipsius, Esq.
14 Penn Plaza, Suite 500
New York, New York 10122
(212) 563-1710



INSURANCE DEPARTMENT
STATE OF NEW YORK
One Commerce Plaza
Albany, NY 12257

STATE OF NEW YORK
Supreme Court, County of KINGS

500585/2010

Jimmy Negron, as Trustee of the
Rose Irizarry
2008 Life Insurance Trust

Plaintiff(s)

against

Defendant(s)

Lincoln National Life Insurance Company

RE :Lincoln National Life Insurance Company

Attorney for Plaintiff(s) and Defendant(s) please take notice as follows:

Attorney for Plaintiff(s) is hereby advised of acknowledgement of service upon this Department Summons and Complaint in the above entitled action on December 31, 2010 at New York, New York. The \$ 40.00 fee is also acknowledged.

Pursuant to Section 1213 of the Insurance Law, said process is being forwarded to Lincoln National Life Insurance Company at its last known principal place of business. Lincoln National Life Insurance Company is not authorized to do business in this State and you are advised that, while such service is accepted and being forwarded to the company, it is your duty to determine whether this is a proper service under Section 1213 of the Insurance Law.

Original to Attorney for Plaintiff(s):

Schindel, Farman, Lipsius, Gardner & Rabinovich LLP
Ira S. Lipsius, Esq.
14 Penn Plaza
Suite 500
New York, New York 10122

Persuant to the requirement of section 1213 of the Insurance Law, Defendant(s) is hereby notified of service as effected above. A copy of the paper is enclosed.

Duplicate to Defendant:

Lincoln National Life Insurance Company
Lincoln National Life Insurance Company
100 North Greene Street P.O. Box 21008
Greensboro, North Carolina 27420

A handwritten signature in cursive script, reading "Clark J. Williams".

Clark J. Williams
Special Deputy Superintendent

Dated Albany, New York, January 05, 2011
483020